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*Attorneys for Defendant/Counter-Claimant/Third-Party Plaintiff Green Tree Servicing, LLC*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

SATICOY BAY LLC SERIES 452 CROCUS  
HILL

Plaintiff,

vs.

GREEN TREE SERVICING, LLC, a Delaware  
limited liability company; QUALITY LOAN  
SERVICE CORPORATION, a California  
corporation;

Defendants.

GREEN TREE SERVICING, LLC,

Counter-Claimant,

vs.

SATICOY BAY LLC SERIES 452 CROCUS  
HILL, a Nevada limited liability company;

Counter-Defendant,

GREEN TREE SERVICING, LLC

Third-Party Plaintiff,

vs.

ASSESSMENT MANAGEMENT SERVICES,  
INC., a Nevada corporation; SAN MARCOS AT  
SUMMERLIN HOMEOWNERS

Case No.: 2:15-cv-977

**ANSWER AND COUNTERCLAIM**

1 ASSOCIATION, a Nevada non-profit  
2 corporation,  
3  
4 Third-Party Defendants.

5 Defendant Green Tree Servicing, LLC (“Green Tree”) hereby answers the Complaint of  
6 Saticoy Bay LLC Series 452 Crocus Hill (“Saticoy Bay” or “Buyer”), counterclaims against  
7 Saticoy Bay, and asserts third-party claims against Assessment Management Services, Inc.  
8 (“AMS” or the “HOA Trustee”), and San Marcos at Summerlin Homeowners Association (“San  
9 Marcos” or the “HOA”), as follows:

10 **ANSWER**

11 Green Tree answers Plaintiff’s Complaint as follows:

12 1. Answering Paragraph 1 of the Complaint, Defendants admit that a Trustee’s Deed  
13 Upon Sale was recorded in the Clark County Recorder’s office on November 13, 2014 as  
14 Instrument Number 20141113-0000023 showing Saticoy Bay Series 452 Crocus Hill as the  
15 Grantee from an HOA foreclosure sale conducted on October 30, 2014. To whatever extent a  
16 further response is required, Defendants deny the allegations in Paragraph 1.

17 2. Answering Paragraph 2 of the Complaint, Defendants admit that a Trustee’s Deed  
18 Upon Sale was recorded in the Clark County Recorder’s office on November 13, 2014 as  
19 Instrument Number 20141113-0000023 showing Saticoy Bay Series 452 Crocus Hill as the  
20 Grantee from an HOA foreclosure sale conducted on October 30, 2014. To whatever extent a  
21 further response is required, Defendants deny the allegations in Paragraph 2.

22 3. Defendants lack information sufficient to admit or deny the allegations in Paragraph 3  
23 of the Complaint; therefore, Defendants deny said allegations.

24 4. Defendants admit the allegations in Paragraph 4 of the Complaint.

25 5. Defendants deny the allegations in Paragraph 5 of the Complaint.

26 6. Defendants aver that the allegations in Paragraph 6 of the Complaint constitute legal  
27 conclusions to which no response is required. To whatever extent a response is required,  
28 Defendants deny the allegations in Paragraph 6 of the Complaint.

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1       7. Defendants lack information sufficient to admit or deny the allegations in Paragraph 7  
2 of the Complaint; therefore, Defendants deny said allegations.

3       8. Defendants admit the allegations in Paragraph 8 of the Complaint.

4       9. Defendants deny the allegations in Paragraph 9 of the Complaint

5       10. Defendants deny the allegations in Paragraph 10 of the Complaint.

6       11. Defendants deny the allegations in Paragraph 11 of the Complaint.

7                   **ANSWER TO SECOND CLAIM FOR RELIEF**

8       12. Answering the twelfth Paragraph of the Complaint (incorrectly and duplicatively  
9 identified in the Complaint as Paragraph 10), Defendants here incorporate all of its responses to  
10 the previous paragraphs as if fully set forth.

11       13. Answering the thirteenth Paragraph of the Complaint (incorrectly and duplicatively  
12 identified in the Complaint as Paragraph 11), Defendants deny.

13       14. Answering the fourteenth Paragraph of the Complaint (incorrectly identified in the  
14 Complaint as Paragraph 12), Defendants deny.

15                   **ANSWER TO THIRD CLAIM FOR RELIEF**

16       15. Answering the fifteenth Paragraph of the Complaint (incorrectly identified in the  
17 Complaint as Paragraph 13), Defendants incorporate all of their responses to the previous  
18 paragraphs as if fully set forth.

19       16. Defendants aver that the sixteenth Paragraph of the Complaint (incorrectly identified  
20 as Paragraph 14) constitutes a request for relief to which no response is required. To whatever  
21 extent a response is required, Defendants deny.

22       17. Answering the seventeenth Paragraph of the Complaint (incorrectly identified as  
23 Paragraph 15), Defendants deny.

24                   **DEFENDANT ASSERTS THE FOLLOWING AFFIRMATIVE DEFENSES:**

25                   **FIRST AFFIRMATIVE DEFENSE**

26                   **(Failure to State a Claim)**

27       Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be  
28 granted.

**SECOND AFFIRMATIVE DEFENSE**

**(Priority)**

To the extent the HOA's foreclosure sale was valid, Plaintiff took title of the Property subject to Defendant's first priority Deed of Trust, thereby forestalling any injunction/extinguishment of the Defendant's interest in the Property.

**THIRD AFFIRMATIVE DEFENSE**

**(Assumption of Risk)**

Plaintiff, at all material times, calculated, knew and understood the risks inherent in the situations, actions, omissions, and transactions upon which it now bases its various claims for relief, and with such knowledge, Plaintiff undertook and thereby assumed such risks and is consequently barred from all recovery by such assumption of risk.

**FOURTH AFFIRMATIVE DEFENSE**

**(Commercial Reasonableness and Violation of Good Faith - NRS 116.1113)**

The HOA lien foreclosure sale by which Plaintiff took its alleged interest was commercially unreasonable if it eliminated Defendant's Deed of Trust, as Plaintiff contends. The sales price, when compared to the outstanding balance of Defendant's Note and Deed of Trust and the fair market value of the Property, demonstrates that the sale was not conducted in good faith as a matter of law. The circumstances of sale of the property violated the HOA's obligation of good faith under NRS 116.1113 and duty to act in a commercially reasonable manner.

**FIFTH AFFIRMATIVE DEFENSE**

**(Equitable Doctrines)**

Plaintiff's claims are barred by the equitable doctrines of laches, unclean hands, and failure to do equity.

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**SIXTH AFFIRMATIVE DEFENSE**

**(Acceptance)**

Any acceptance of any portion of the excess proceeds does not “satisfy” the amount due and owing on the Loan and would not constitute a waiver of its rights under the Loan and Deed of Trust, or statute.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Waiver and Estoppel)**

By reason of Plaintiff’s acts and omissions, Plaintiff has waived its rights and is estopped from asserting the claims against Defendant.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Void for Vagueness)**

To the extent that Plaintiff’s interpretation of NRS 116.3116 is accurate, the statute and Chapter 116 as a whole are void for vagueness as applied to this matter.

**NINTH AFFIRMATIVE DEFENSE**

**(Due Process Violations)**

A senior deed of trust beneficiary cannot be deprived of its property interest in violation of the Procedural Due Process Clause of the 14th Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.

**TENTH AFFIRMATIVE DEFENSE**

**(Violation of Procedural Due Process)**

The super-priority lien was satisfied prior to the homeowner's association foreclosure under the doctrines of tender, estoppel, laches, or waiver.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Satisfaction of Super-Priority Lien)**

The claimed super-priority lien was satisfied prior to the homeowner's association foreclosure under the doctrines of tender, estoppel, laches, or waiver.

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**TWELFTH AFFIRMATIVE DEFENSE**

**(Federal Preemption)**

Plaintiff's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes an HOA sale from extinguishing Fannie Mae's interest in the Property and preempts any state law to the contrary.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Facial Invalidity – Due Process)**

NRS 116 is void on its face to the extent that it purports to require interested lienholders to "opt in" to order to receive notice of an HOA foreclosure sale.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Additional Affirmative Defenses)**

Defendant reserves the right to assert additional affirmative defenses in the event discovery and/or investigation indicates that additional affirmative defenses are applicable.

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**COUNTERCLAIM AND THIRD-PARTY COMPLAINT**

Green Tree counterclaims against Saticoy Bay, and asserts third-party claims against AMS and San Marcos, as follows:

**I.**

**PARTIES, JURISDICTION, AND VENUE**

1. Counterclaimant/Third-Party Plaintiff Green Tree is a Delaware limited liability company with its principal place of business in Minnesota and doing business in Clark County, Nevada.

2. Upon information and belief, Counterdefendant Saticoy Bay is a Nevada limited-liability company with its principal place of business in Nevada.

3. Upon information and belief, Third-Party Defendant San Marcos is a Nevada non-profit corporation with its principal place of business in Nevada.

4. Upon information and belief, Third-Party Defendant AMS is a Nevada corporation with its principal place of business in Nevada.

5. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332, as all plaintiffs are “citizens of different States” from all defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1)-(2) because Defendants reside in this district; a substantial part of the events or omissions giving rise to these claims occurred in this district; and the property that is the subject of this action is situated in this district.

7. The Court has personal jurisdiction over Saticoy Bay because this lawsuit arises out of and is connected with Saticoy Bay’s purported purchase of an interest in real property situated in Nevada and, upon information and belief, Saticoy Bay is a Nevada limited-liability company.

8. The Court has personal jurisdiction over San Marcos because this lawsuit arises out of and is connected with San Marcos’s purported foreclosure of real property located in Nevada and, upon information and belief, San Marcos is a Nevada corporation.

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## FACTUAL BACKGROUND

10. This action concerns the parties' rights in that certain real property commonly described as 452 Crocus Hill Street, Las Vegas, NV 89138; APN 137-35-514-108 (the "Property"). The Property is legally described as follows:

LOT 78 IN BLOCK 5 OF FINAL MAP OF SAN MARCOS UNIT TWO, (A COMMON INTEREST COMMUNITY) AS SHOWN BY MAP THEREOF ON FILE IN BOOK 105 OF PLATS, PAGE 82, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

A NON-EXCLUSIVE EASEMENT FOR ACCESS, INGRESS, EGRESS AND USE OF, IN TO AND OVER THE ASSOCIATION PROPERTY AS PROVIDED FOR IN AND SUBJECT TO THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASMENTS FOR SAN MARCOS AT SUMMERLIN

11. On or about July 30, 2003, the Property was conveyed to Jung Sun Kim and June Young Kim (the “Kims”). A Grant, Bargain and Sale Deed evidencing the conveyance to Kim was recorded on or about July 30, 2003, as Book and Instrument 20030731-02058. A true and correct copy of said Grant, Bargain and Sale Deed is attached as Exhibit 1.

13. Upon information and belief, Fannie Mae purchased the Kim Loan or about October 1, 2003.



1        14.        On August 25, 2011, an Assignment of Deed of Trust was recorded in the Clark  
2 County Recorder's office as Instrument Number 20110825-0004731, reflecting that KH  
3 Financial, L.P. had assigned its interest in the Deed of Trust to Bank of America, N.A., as  
4 Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans  
5 Servicing LP ("BANA"). A copy of said Corporation Assignment of Deed of Trust is attached  
6 as Exhibit 3.

7        15.        On or about August 28, 2013, an Assignment of Deed of Trust was recorded as Book  
8 and Instrument Number 20130828-00000882, reflecting that BANA had assigned its interest in  
9 the Deed of Trust to Green Tree Servicing, LLC. A true and correct copy of said Corporate  
10 Assignment of Deed of Trust is attached as Exhibit 4.

11 ***The HOA Foreclosure and Saticoy Bay's Alleged Acquisition of the Property***

12        16.        The Property is subject to a Declaration of Covenants, Conditions, and Restrictions  
13 for San Marcos (the "CC&Rs").

14        17.        On or about June 21, 2013, Notice of Claim of Delinquent Assessment Lien (the  
15 "2013 Lien") was recorded as Book and Instrument Number 20130621-0001487 on behalf of  
16 Defendant San Marcos by its foreclosure trustee/agent, Asset Management Services. A true and  
17 correct copy of said Notice of Claim of Delinquent Assessment Lien is attached as Exhibit 5.

18        18.        The 2013 Lien stated that "THE AMOUNT OWING AND UNPAID TOTAL is  
19 \$8,174.50," and that "[t]his amount may include assessments, late fees, special assessments,  
20 fines, collection fees, trustee fee[s], and interest."

21        19.        On or about October 3, 2013, a Notice of Default and Election to Sell Under  
22 Homeowners Association Lien ("2013 Notice of Default") was recorded as Book and Instrument  
23 Number 20131003-0000295 on behalf of San Marcos. A true and correct copy of said Notice of  
24 Default and Election to Sell Pursuant to the Lien for Delinquent Assessments is attached as  
25 Exhibit 6.

26        20.        The 2013 Notice of Default stated that "the amount owed is \$9,372.21."

27        21.        On or about February 20, 2014, a second Notice of Default and Election to Sell Under  
28 Homeowners Association Lien ("2014 Notice of Default") was recorded as Book and Instrument

1 Number 20140220-0002817 on behalf of San Marcos. A true and correct copy of said Notice of  
2 Default and Election to Sell Pursuant to the Lien for Delinquent Assessments is attached as  
3 Exhibit 7.

4 22. The 2014 Notice of Default stated that “the amount owed is \$9,695.21.”

5 23. On or about October 8, 2014, a Notice of Foreclosure Sale (“2014 Notice of Sale”)  
6 was recorded as Book and Instrument Number 20141008-0000709 on behalf of San Marcos. A  
7 true and correct copy of said Notice of Foreclosure Sale is attached as Exhibit 8.

8 24. The 2014 Notice of Sale stated that “[t]he total amount of the unpaid balance of the  
9 obligation secured by the property to be sold and reasonable estimated costs, expenses and  
10 advances at the time of the initial publication of the Notice of Sale is \$13,529.18.”

11 25. None of the aforementioned notices identified above and attached as Exhibits 5, 6, 7,  
12 and 8 identified what proportion of the claimed lien was for alleged late fees, interest,  
13 fines/violations, or collection fees/costs.

14 26. None of the aforementioned notices identified above and attached as Exhibits 5, 6, 7,  
15 and 8 specified what proportion of the lien, if any, that San Marcos claimed constituted a “super-  
16 priority” lien.

17 27. None of the aforementioned notices identified above and attached as Exhibits 5, 6, 7,  
18 and 8 specified whether San Marcos was foreclosing on the “super-priority” portion of its lien, if  
19 any, or on the sub-priority portion of the lien.

20 28. None of the aforementioned notices identified above and attached as Exhibits 5, 6, 7,  
21 and 8 provided any notice of a right to cure.

22 29. None of the aforementioned notices identified above and attached as Exhibits 5, 6, 7,  
23 and 8 provided notice that the Deed of Trust on the Property would be claimed to be foreclosed  
24 or extinguished.

25 30. On information and belief, AMS failed to mail a notice of the HOA foreclosure sale  
26 to any of Plaintiffs or their agents.

27 31. On or about November 13, 2014, a Trustee’s Deed Upon Sale was recorded as Book  
28 and Instrument Number 20141113-0000023, stating that Satcoy Bay had prevailed at an HOA

1 lien foreclosure sale conducted on October 30, 2014 (“HOA Sale”). A true and correct copy of  
2 said deed is attached as Exhibit 9. The deed does not state the sale price. On information and  
3 belief, the sale price was approximately \$160,000.

4 32. Upon information and belief, at the time of the HOA Sale the fair market value of the  
5 Property exceeded \$330,000.00. The sale price at the HOA Sale was not commercially  
6 reasonable when compared to the debt owed on the Kim Loan and the fair market value of the  
7 Property.

8 **III.**

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **(Quiet Title/Declaratory Relief)**

12 33. Green Tree incorporates and re-alleges all previous paragraphs, as if fully set forth  
13 herein.

14 34. This Court has the power and authority to declare Green Tree’s rights and interests in  
15 the Property and to resolve Counter-Defendants’ and Third Party Defendants’ adverse claims in  
16 the Property.

17 35. Further, this Court has the power and authority to declare the rights and interests of  
18 the parties following the acts and omissions of the HOA and HOA Trustee in foreclosing upon  
19 the Property.

20 36. Green Tree’s Deed of Trust is a first secured interest on the Property as intended by  
21 NRS 116.3116(2)(b).

22 37. As the current beneficiary under the Deed of Trust and Kim Loan, Green Tree’s  
23 interest remains an encumbrance upon the Property, retains its first-position status in the  
24 Property’s chain of title after the HOA Sale, and is superior to the interest, if any, acquired by  
25 Buyer or held or claimed by any other party.

26 38. Upon information and belief, Buyer may claim an interest in the Property that is  
27 adverse to the Green Tree’s interest.

28 . . .

1       39.     Upon information and belief, the HOA and the HOA Trustee failed to provide to  
2 Green Tree and/or its predecessors proper, adequate notices required by Nevada statutes, the  
3 CC&Rs and due process; and therefore the HOA Sale is void and should be set aside or  
4 rescinded.

5       40.     Based on the parties' adverse claims, Green Tree is entitled to a judicial  
6 determination regarding the rights and interests of the respective parties to the case.

7       41.     For all the reasons set forth above, Green Tree is entitled to a determination from this  
8 Court that it is the beneficiary of a first-position Deed of Trust which remains an encumbrance  
9 upon the Property and is superior to the interest held by Buyer, and all other parties, if any such  
10 interests exist.

11       42.     In the alternative, for all the reasons set forth above, Green Tree is entitled to a  
12 determination from this Court that the HOA Sale was unlawful and void.

13       43.     Green Tree has furthermore been required to retain counsel and is entitled to recover  
14 reasonable attorney's fees for having brought the underlying action.

15                   **SECOND CAUSE OF ACTION**

16                   **(Permanent and Preliminary Injunction versus Buyer)**

17       44.     Green Tree incorporates by reference the allegations of all previous paragraphs, as if  
18 fully set forth herein.

19       45.     As set forth above, Buyer may claim an ownership interest in the Property that is  
20 adverse to Green Tree.

21       46.     Any sale or transfer of the Property prior to a judicial determination concerning the  
22 respective rights and interests of the parties to the case may be rendered invalid if Green Tree's  
23 Deed of Trust remains an encumbrance upon the Property which was not extinguished by the  
24 HOA Sale.

25       47.     Green Tree has a substantial likelihood of success on the merits of the complaint, for  
26 which compensatory damages will not compensate Green Tree for the irreparable harm of the  
27 loss of title to a bona fide purchaser or loss of the first position priority status secured by the  
28 Property.

48. Green Tree has no adequate remedy at law due to the uniqueness of the Property involved in the case.

49. Green Tree is entitled to a preliminary and permanent injunction prohibiting Buyer, their successors, assigns, and agents from conducting a sale, transfer or encumbrance of the Property if it is claimed to be superior to Green Tree's Deed of Trust or not subject to that Deed of Trust.

50. Green Tree is entitled to a preliminary and permanent injunction requiring Buyer to pay all taxes, insurance and homeowner's association dues during the pendency of this action.

51. Green Tree is entitled to a preliminary and permanent injunction requiring Buyer to segregate and deposit all rents with the Court or a Court-approved trust account over which Buyer has no control during the pendency of this action.

52. Green Tree has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

### THIRD CAUSE OF ACTION

## **(Wrongful Foreclosure versus the HOA and the HOA Trustee)**

53. Green Tree incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

54. Upon information and belief, the HOA, and the HOA Trustee did not comply with all mailing and noticing requirements stated in NRS 116.31162 through NRS 116.31168.

55. The HOA and the HOA Trustee failed to provide notice pursuant to the CC&Rs.

56. Because the HOA Sale was wrongfully conducted and violated applicable law, the Court should set it aside to the extent that it purports to have extinguished Green Tree's first Deed of Trust and delivered free and clear title to the Property to Buyer.

57. Because the HOA Sale was not commercially reasonable, it was invalid, wrongful and should be set aside.

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1       76.     As a proximate result of HOA's and the HOA Trustee's breaches of their duties,  
2 Green Tree has incurred general and special damages in an amount in excess of \$10,000.00.

3       77.     If Green Tree is found to have lost its first secured interest in the Property, it was the  
4 proximate result of HOA's and the HOA Trustee's breaches of their statutory duties, and Green  
5 Tree has thereby suffered general and special damages in an amount in excess of \$10,000.00.

6       78.     Green Tree has been required to retain counsel to prosecute this action and is entitled  
7 to recover reasonable attorney's fees to prosecute this action.

8                                   **SIXTH CAUSE OF ACTION**

9                                   **(Breach of Contract versus the HOA and ALESSI)**

10       79.     Green Tree incorporates by reference the allegations of all previous paragraphs, as if  
11 fully set forth herein.

12       80.     Green Tree was an intended beneficiary of the HOA's CC&Rs.

13       81.     The HOA and the HOA Trustee breached the obligations, promises, covenants and  
14 conditions of the CC&Rs owed to Green Tree by the circumstances under which they conducted  
15 the HOA Sale of the Property.

16       82.     The HOA and the HOA Trustee's breaches of the obligations, promises, covenants  
17 and conditions of the CC&Rs proximately caused Green Tree general and special damages in an  
18 amount in excess of \$10,000.00.

19       83.     Green Tree has been required to retain counsel to prosecute this action and is entitled  
20 to recover reasonable attorney's fees to prosecute this action.

21                                   **SEVENTH CAUSE OF ACTION**

22                                   **(Misrepresentation versus the HOA)**

23       84.     Green Tree incorporates by reference the allegations of all previous paragraphs, as if  
24 fully set forth herein.

25       85.     Green Tree is within the class or persons or entities the HOA intended or had reason  
26 to expect to act or to refrain from action in reliance upon the provisions of the CC&Rs, including  
27 without limitation, the Mortgagee Protection Clause.

28       ...









1 Court-approved trust account over which Buyer has no control during the  
2 pendency of this action.

3 8. If it is determined that Green Tree's Deed of Trust has been extinguished by the  
4 HOA Sale, for special damages in the amount of the fair market value of the  
5 Property or the unpaid balance of the Kim Loan and Deed of Trust, at the time of  
6 the HOA Sale, whichever is greater;

7 9. For general and special damages in excess of \$10,000.00;

8 10. For attorney's fees;

9 11. For costs of incurred herein, including post-judgment costs;

10 For any and all further relief deemed appropriate by this Court.

11 DATED this 1<sup>st</sup> day of June, 2014.

12 /s/Ryan O'Malley

13 BUCKLEY MADOLE, P.C.

14 Michael Gonzales, Esq.

15 (Pro Hac Vice Admission Pending)

16 Ryan O'Malley, Esq.

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20 Las Vegas, NV 89134

21 Attorneys for Green Tree Servicing, LLC  
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**CERTIFICATE OF SERVICE**

Pursuant to F.R.C.P. 5(b) and Electronic Filing Procedure IV(B), I certify that on the 1<sup>st</sup> day of June, 2015, a true and correct copy of the attached **ANSWER AND COUNTERCLAIM** was transmitted electronically through the Court's e-filing electronic notice system to the attorney(s) associated with this case. If electronic notice is not indicated through the court's e-filing system, then a true and correct paper copy of the foregoing document was delivered by U.S. Mail.

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/s/Candice Benson  
Candice Benson  
An employee of Buckley Madole, P.C.